(54)

UNITED
NATIONS

CAT

Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment

Distr.
GENERAL

CAT/C/SR.104
4 May 1992

ENGLISH
Original: FRENCH

COMMITTEE AGAINST TORTURE

Eighth session

SUMMARY RECORD OF THE FIRST PART (PUBLIC)* OF THE 104th MEETING

Held at the Palais des Nations, Geneva,
on Monday, 27 April 1992, at 10.30 a.m.

Temporary Chairman: Mr. HOUSHMAND (Representative of the Secretary-General)

Chairman: Mr. VOYAME

CONTENTS

Opening of the session by the representative of the Secretary-General

Solemn declaration by the newly-elected members of the Committee

Election of the Officers of the Committee

Adoption of the agenda

Organizational and other matters

* The summary record of the second part (closed) of the meeting appears as document CAT/C/SR.104/Add.1.

This record is subject to correction.

Corrections should be submitted in one of the working languages. They should be set forth in a memorandum and also incorporated in a copy of the record. They should be sent within one week of the date of this document to the Official Records Editing Section, room E.4108, Palais des Nations, Geneva.

Any corrections to the records of the public meetings of the Committee at this session will be consolidated in a single corrigendum, to be issued shortly after the end of the session.

GE.92-12239/9605a

The meeting was called to order at 10.40 a.m.

OPENING OF THE SESSION BY THE REPRESENTATIVE OF THE SECRETARY-GENERAL (item 1 of the provisional agenda)

1. The TEMPORARY CHAIRMAN declared the session open. He welcomed the members of the Committee on behalf of the Under-Secretary-General for Human Rights, who deeply regretted not being able to attend the opening of the session due to his absence from Geneva, but who would make a statement on his return the following day. On that occasion, he would provide detailed information on developments at the most recent meetings of the General Assembly and the Commission on Human Rights.

SOLEMN DECLARATION BY THE NEWLY-ELECTED MEMBERS OF THE COMMITTEE (item 2 of the provisional agenda)

2. The TEMPORARY CHAIRMAN, on behalf of the Secretary-General, congratulated the five members of the Committee who had been elected or re-elected at the third meeting of the States parties to the Convention and invited them to make the solemn declaration required under rule 14 of the Committee's rules of procedure.

3. Mr. BEN AMAR, Mr. BURNS, Mr. EL IBRASHI, Mr. GIL LAVEDRA and Mr. LORENZO solemnly declared that they would perform their duties and exercise their powers as members of the Committee against Torture honourably, faithfully, impartially and conscientiously.

ELECTION OF THE OFFICERS OF THE COMMITTEE (item 3 of the provisional agenda)

4. The TEMPORARY CHAIRMAN called for nominations for Chairman of the Committee.

5. Mr. DIPANDA MOUELLE said that, since the establishment of the Committee, Mr. Voyame had shown a dynamism, clear-sightedness and open-mindedness which had been appreciated by all. He proposed that, as the Committee was still a very new body and in need of equilibrium and stability, Mr. Voyame should be re-elected to the office which he had occupied so effectively in the past.

6. Mr. MIKHAILOV and Mr. GIL LAVEDRA supported the proposal. According to practice, the chairmanship should in principle be held in rotation. However, having been formed only recently, the Committee still needed to be consolidated, and no one was better qualified to preside over that process than Mr. Voyame.

7. Mr. Voyame was re-elected Chairman by acclamation.

8. Mr. Voyame took the Chair.

9. The CHAIRMAN thanked the members of the Committee for the confidence which they had once again shown in him despite his expressed wish to hand over to someone else and called for nominations for the offices of Vice-Chairmen and Rapporteur.

10. Mr. SORENSEN, supported by Mr. KHITRIN, proposed that the outgoing Vice-Chairmen and Rapporteur should be re-elected, so as to preserve the stability and harmony which had thus far prevailed among the officers of the Committee.

11. Mr. Dipanda Mouelle, Mr. Gil Lavedra and Mr. Mikhailov were re-elected Vice-Chairmen by acclamation.

12. Mr. Burns was re-elected Rapporteur by acclamation.

ADOPTION OF THE AGENDA (item 4 of the provisional agenda) (CAT/C/18)

13. The provisional agenda (CAT/C/18) was adopted.

ORGANIZATIONAL AND OTHER MATTERS (agenda item 5)

14. The CHAIRMAN suggested that the Committee should not meet in the afternoon, to allow members to examine the latest reports that had been circulated. Unfortunately, the Committee would have only four reports before it at the current session, which would not enable it to make much headway. He recalled that 26 periodic reports were due by the end of the year and that 22 initial reports, 14 of which were late, were still to be submitted. It was also regrettable that some countries which had submitted their reports felt unable to attend the Committee's meetings in order to introduce them.

15. As was the case each year, it would be desirable for the Committee to hold a press conference. If members had no objection, it could be held on Thursday, 30 April, at 11 a.m.

16. The Committee would also have to consider the status of the Convention in light of document CAT/C/2/Rev.2. There were currently 64 States parties to the Convention, a number which was expected to increase, particularly in view of developments in the former USSR and Yugoslavia. Two supplementary reports, namely those of China and the Libyan Arab Jamahiriya, were still awaited and only a few delegations, such as Uruguay, had provided the additional information requested by the Committee.

17. At meetings of the Preparatory Committee for the World Conference on Human Rights, the Committee against Torture would be represented by Mr. Sorensen and Mr. Mikhailov. They would report to the Committee on the Preparatory Committee's work at its second session. The members of the Committee against Torture would be able to make suggestions for the third session of the Preparatory Committee.

18. The Committee appointed one rapporteur to liaise with each United Nations human rights body. At the current session, Mr. Sorensen would report on the work of the Committee on the Rights of the Child. Mr. El Ibrashi was standing for the office left vacant by Mrs. Chanet and would thus be responsible for liaison with the Human Rights Committee.

19. At the current session, the Committee would probably be addressed by the Chairman of the Board of Trustees of the Voluntary Fund for Victims of Torture.

20. At its last session, the Commission on Human Rights had asked various bodies, including the Committee against Torture, for suggestions on the advisory services programme of the Centre for Human Rights. It might therefore be worthwhile setting aside a meeting of the Committee to consider that question.

21. In its resolution 1992/43, the Commission on Human Rights had invited the Committee to submit comments on a draft optional protocol to the Convention against Torture. That matter had already been taken up by the Committee at its 80th meeting on 25 April 1991 and would have to be discussed further. He understood that Mr. Burns was willing to act as rapporteur on the question.

22. The Committee would also have to reach decisions on General Assembly resolution 46/111 and on the resolutions adopted by the Commission on Human Rights at its forty-eighth session.

23. Mr. Sorensen had proposed that the Committee should consider the possibility of reviewing the Principles of Medical Ethics adopted by the General Assembly in 1982 in its resolution 37/194. It might perhaps be worthwhile for the Committee to consider that question also.

24. At its last session, the Commission on Human Rights had adopted resolution 1992/48 entitled "Human rights and disability", in which it invited human rights treaty monitoring bodies to monitor the compliance of States with their commitments to ensure the full enjoyment of those rights by disabled persons. The Committee might respond to that request by devoting special attention to the plight of persons disabled as a result of torture, particularly in connection with its consideration of article 14 of the Convention.

The public meeting rose at 11.30 a.m.

UNITED
NATIONS

CAT

Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment

Distr.
GENERAL

CAT/C/SR.105
7 May 1992

ENGLISH
Original: FRENCH

COMMITTEE AGAINST TORTURE

Eighth session

SUMMARY RECORD OF THE 105th MEETING

Held at the Palais des Nations, Geneva,
on Tuesday, 28 April 1992, at 10 a.m.

Chairman: Mr. VOYAME

CONTENTS

Consideration of reports submitted by States parties under article 19 of the Convention

Replies of the Government of Uruguay to the questions asked by the the Committee against Torture

Organizational and other matters (continued)

Submission of reports by States parties under article 19 of the Convention

---

This record is subject to correction.

Corrections should be submitted in one of the working languages. They should be set forth in a memorandum and also incorporated in a copy of the record. They should be sent within one week of the date of this document to the Official Records Editing Section, room E.4108, Palais des Nations, Geneva.

Any corrections to the records of the meetings of this session will be consolidated in a single corrigendum, to be issued shortly after the end of the session.

GE.92-12259/4457B

The meeting was called to order at 10.05 a.m.

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER ARTICLE 19 OF THE CONVENTION (agenda item 7)

Replies of the Government of Uruguay to the questions asked by the Committee against Torture (CAT/C/5/Add.30)

1. At the invitation of the Chairman, Mr. Lacarte Muró and Mr. Chabén (Uruguay) took places at the Committee table.

2. The CHAIRMAN said that, during its consideration of the initial report of Uruguay at the preceding session, the Committee had asked many questions of the Uruguayan delegation, which had requested time in which to reply. Document CAT/C/5/Add.30 contained very detailed answers to those questions. The Committee was now in the fourth stage of its consideration of the report, namely, that of final observations.

3. Speaking as a member of the Committee, he said that he would like to make two general comments based on examples taken from the replies. In the first place, there appeared to be a number of laws which were not consistent with the Constitution and a number of regulations which were not consistent with the laws. Although it had been stated that the Constitution took precedence in such cases and that judges had an obligation to ensure that the laws were compatible with the Constitution, it was not only judges who enforced the laws, but also the police, which tended to apply regulations blindly. The police could, moreover, hardly be expected to guarantee that laws were compatible with the Constitution. That situation would therefore have to be changed in order to make the system more coherent.

4. Secondly, the Government of Uruguay stated that torture continued to be practised in a few cases, which it naturally condemned, but which were caused by habits acquired under the dictatorship. That was a matter of regret to the Committee, even though it understood what was involved, and it considered that those guilty must continue to be energetically prosecuted. Although there had been administrative inquiries and some cases had been referred to the courts, there had been no indication in the replies of the Uruguayan delegation that anyone had been convicted.

5. Mr. KHITRIN said that the Government of Uruguay had not taken strong enough measures to prosecute the persons responsible for torture under the dictatorship. He also had doubts about the effectiveness of the measures taken to prohibit torture. For example, it was indicated in the report that some 600 doctors had been found guilty of having taken part in acts of torture. However, it was not enough to disbar them from the Medical Association; they should also be severely punished. The same was true of cases of the release of persons who had been found guilty of acts of torture committed on the orders of a superior officer.

6. The CHAIRMAN recalled that Uruguay was the first country to have acceded to the Convention and that it would submit its first periodic report in June 1992.

7. Mr. SORENSEN said that he was satisfied with the replies of the Uruguayan delegation. He commended the Government of Uruguay on its very detailed answers and said he thought that an interval between the time when questions were asked and replies were given might be a good thing for the Committee's work.

8. In connection with article 14 of the Convention relating to legal measures taken on behalf of victims of torture, he noted that Uruguay's replies did not refer at all to medical rehabilitation; he hoped that the periodic report to be submitted shortly would deal in depth with that question. He had also found it useful to have written replies.

9. Mr. MIKHAILOV said that he endorsed the comments by the Chairman, Mr. Khitrin and Mr. Sorensen. He had found the replies to be specific, objective, detailed and accurate. The Government of Uruguay had described the specific legal situation as it was at the present time. Although it was to be deplored that cases of torture still existed, it must be noted that the Government sincerely wanted to put an end to that practice and to bring democracy to the country.

10. Mr. GIL LAVEDRA (Country Rapporteur) thanked Uruguay for the efforts it had made to reply in such detail to the questions asked by the Committee. The initial report and the answers made it clear that Uruguay was firmly determined to respect its international commitments and to enforce the rule of law in the country. Despite those efforts, however, some problems still remained. In his opinion, the greatest problems were caused by the rules relating to prison treatment and the maintenance of some regulations which had no place in a State subject to the rule of law. He was thinking in particular of Decree No. 690/980, which allowed the police to hold a suspect in custody in order to obtain information from him. It was a well-known fact that, although the police had that possibility, it more often than not gave rise to abuses and ill-treatment.

11. The report stated that Decree No. 690/980, which had not been repealed, was not binding, since the court could declare it incompatible with higher-ranking legal provisions. Some reservations were none the less in order, for Uruguay had a diffuse system of constitutional monitoring; specific provisions would thus have to be adopted because, if a law was not repealed, it was applied. That was what had happened in the case referred to in annex 6 of the initial report of Uruguay (CAT/C/5/Add.27), which showed that Decree No. 690/980 had been applied. The matter would therefore have to be decided by the executive. The same was true of the question of the prison system, as governed by Decree-Law No. 14470, which embodied the principle of individual treatment and distinguished between accused persons and convicted persons. In fact, the point was only that such persons should be physically separated; the regime applicable to them was the same, as clearly shown by articles 2, 4 and 25 of the Decree-Law.

12. In the absence of judicial supervision, moreover, the prison system was very unwieldy and that created quite a few problems. During the visit by the Supreme Court of Justice to La Libertad prison in November 1990, there had been many signs of ill-treatment. The provisions governing the prison system therefore had to be brought into line with the Convention.

13. The first and second reports also gave rise to some doubts that might be dispelled in the periodic report to be submitted soon. One problem was how to interpret what was meant by the direct application of the rules of the Convention. Several sections of the report stated that the provisions of international treaties formed part of internal law and that they were thus directly applicable by the courts. However, more detailed replies should have been given to certain questions relating, for example, to articles 3 and 15 of the Convention. In other cases where long and detailed answers had been given, it would have been easier simply to confirm that the Convention was being applied.

14. He warmly commended Uruguay on its very strong commitment to the rule of law and democracy. It was not only the first country to have acceded to the Convention, but one of the few to have accepted the Committee's competence to receive complaints. The authorities also showed a keen interest in applying the rules of the Convention. In that connection, he referred to the training courses organized for police and prison staff by the Ministry of the Interior in cooperation with the United Nations Centre for Human Rights; the pilot project for teaching human rights starting in primary school, in cooperation with the Latin American Human Rights Institute; the establishment of a chair of human rights at the University of the Republic; and the establishment of a centre for cooperation between the Ministry of Foreign Affairs and the United Nations Centre for Human Rights to bring domestic legislation into line with all the provisions of the international conventions to which Uruguay was a party. He also noted that a technical cooperation project had been set up with WHO to protect the victims of torture.

15. He looked forward with great interest to the results of those praiseworthy efforts and was sure that those results would be reflected in the periodic report Uruguay would submit in the near future.

16. Mr. DIPANDA MOUELLE (Alternate Country Rapporteur) said that he associated himself with Mr. Gil Lavedra's congratulations and comments. He noted that Uruguay's clear replies showed that it was making serious efforts to implement the Convention.

17. The CHAIRMAN said that the comments and recommendations made by the Country Rapporteur and the Alternate Country Rapporteur were supported by the Committee as a whole. Those comments and recommendations would be communicated to the Government of Uruguay so that it might take them into account. He once again thanked the delegation for Uruguay's clear, full and open answers to the Committee's questions.

18. Mr. LACARTE MURO (Uruguay) thanked the Chairman and the members of the Committee and said that the comments by the members of the Committee would be reported to his Government that very day. He had taken note of some very specific comments and recalled that Uruguay's aspirations were profoundly democratic. He welcomed the fact that the Committee had clearly understood that the intention of the Government of Uruguay was to eliminate all traces of its shameful past and he assured the Committee that the next report would further confirm that intention.

19. Mr. Lacarte Muró and Mr. Chabén (Uruguay) withdrew.

20. The meeting was suspended at 10.40 a.m. and resumed at 10.50 a.m.

ORGANIZATIONAL AND OTHER MATTERS (agenda item 5) (continued)

21. The CHAIRMAN said that, after the meeting, Mr. Sorensen would give a talk at WHO on the topic of "torture in modern times".

Exchange of views on the question of a draft optional protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment

22. Mr. BURNS said that, at its preceding session, the Commission on Human Rights had had before it a draft optional protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, which had been submitted by Costa Rica and would set up an international system of periodic unannounced visits to places of detention. The body entrusted with that task would play a preventive role, unlike the Committee, whose role was to react to de facto situations brought to its attention, and the International Committee of the Red Cross, which also intervened in already existing situations, such as armed conflicts.

23. Although the draft protocol had a very praiseworthy objective, it had given rise to some doubts, particularly about the relationship between the future body, the Committee against Torture and the Special Rapporteur on torture. In reply to those concerns, it had been stated that there would be no conflict of responsibilities and that the Committee's work would be taken fully into account. It had also been proposed that the body responsible for those preventive visits should be a subcommittee of the Committee against Torture.

24. The draft protocol was in keeping with the wishes of all, including many non-governmental organizations which had fully supported it in a recent report and urged that it should be rapidly implemented. There was no doubt that the Commission on Human Rights would continue to work on the draft protocol. It might well be that the Committee would then be given responsibility for a future subcommittee and that it would be called upon to set up the necessary inspection procedures, a delicate task indeed.

25. Mr. EL IBRASHI said that he would like to know exactly what role the Committee would play in the implementation of the future protocol and whether it was now supposed to make comments on and amendments to the draft protocol. If so, the members of the Committee might first need some time to consider the text more carefully.

26. The CHAIRMAN said that, so far, the Committee had not been consulted on the draft protocol.

27. Mrs. KLEIN BIDMON (Representative of the Secretary-General) said that, when the Commission on Human Rights had considered the question at its latest session, it had decided to set up a working group to discuss the draft protocol. The working group might ask for the Committee's views.

28. Mr. MIKHAILOV said that the members of the Committee would undoubtedly have opinions and proposals on the draft protocol. The question was worth thinking about and, as Mr. El Ibrashi had suggested, it might be a good thing for the Committee to come back to it at a subsequent meeting.

29. Mr. BURNS said that Mr. El Ibrashi had raised the key question of the Committee's competence in that regard. When the Committee discussed the matter, it would have to bear in mind article 20 of the Convention, which defined its role in respect of inquiries. With regard to the question of the Committee's role in a future system, the answer was quite simple: it would be to elect the members of the subcommittee. Although it was true that the Commission on Human Rights had not asked the Committee to make any recommendations, the Committee would still have to be prepared to state its views when it was requested to do so.

30. Mr. SORENSEN said he was convinced that the Committee would be called upon to state its views on that very important question and recalled that the draft protocol submitted by Costa Rica would set up a body that was very similar to the European Committee for the Prevention of Torture. Since he was a member of that Committee, he had a great deal to say about the draft protocol. He had followed the matter closely and could provide useful information on the work of the European Committee, whose latest report he had just received and whose experience would make it possible to avoid serious mistakes.

31. In the first place, the principle of visits to places of detention was excellent, but the problem was to decide how they should be conducted. There were several traps to be avoided. Inspections, whose aim was preventive in nature, absolutely had to be confidential because, otherwise, there would be no point in carrying them out. Worse still, if Government action and confidential action were combined, they might cancel each other out; they both served a purpose, provided that they were carried out separately, and a merger between the Committee and the future body would be counterproductive. From that point of view, regional inspection arrangements would be more flexible and more suitable than an unwieldy international mechanism which would, inter alia, give rise to enormous language problems during on-the-spot visits.

32. Mr. EL IBRASHI said he also believed that the Committee would have a say in a question of the draft protocol and that it should be prepared to state its views when the Commission on Human Rights requested it to do so. In that connection, it might be advisable for the latest report of the European Committee for the Prevention of Torture to be distributed to the members of the Committee for their information.

33. Mr. BEN AMMAR said that the draft protocol was in keeping with the spirit of the Convention and, in particular, its articles 2 and 11. Its adoption would be a logical consequence of the Convention, particularly since prevention was at least as effective as so-called "repressive" action. The Committee should therefore discuss that question in a constructive and optimistic spirit at a later meeting.

34. Mrs. KLEIN BIDMON (Representative of the Secretary-General) drew the Committee's attention to the main provisions of Commission on Human Rights resolution 1992/43, in which it decided to set up an open-ended working group to prepare a draft optional protocol to the Convention against Torture and invited Governments, intergovernmental bodies and the Committee against Torture to transmit comments on the draft protocol. Since the establishment of the working group would have financial implications, the Economic and Social Council had to agree to it.

35. Mr. BRUNI (Secretary of the Committee) said that the Committee had already discussed a possible draft protocol and that a summary of its debates on the question was to be found in paragraphs 16 to 20 of its report to the General Assembly at its forty-sixth session (A/46/46) and in the summary record contained in document CAT/C/SR.80.

36. Mr. SORENSEN said that he welcomed the emphasis Mr. Ben Ammar had placed on the preventive nature of visits to places of detention. He also suggested that the Committee should consider the question of the draft protocol on Friday, 1 May, so that a working group which the Committee might set up for that purpose could meet the following day and submit a report to the Committee at the beginning of the following week.

37. Mr. GIL LAVEDRA said that the Committee should be in a position to state its views on a draft protocol at its next session and that the question should then be included in its agenda. He also noted that the members of the Committee all agreed on the need for visits to places of detention in States parties, but there were problems of coordination, particularly at the regional level. He therefore proposed that the Committee should set a date for an exchange of views on the question. A rapporteur or a working group would then prepare a report, which would lead to a final document.

38. The CHAIRMAN, summing up the discussion, suggested that the consideration of the draft protocol should be postponed until the beginning of the following week and requested the secretariat to provide the members of the Committee with the documentation on the question that had been made available to the European Committee for the Prevention of Torture, since there appeared to be an analogy between what the European Committee was proposing at the regional level and what the Committee against Torture was proposing at the international level. He gathered that Mr. Burns would agree to chair the working group of the Committee which might be set up to discuss that question.

SUBMISSION OF REPORTS BY STATES PARTIES UNDER ARTICLE 19 OF THE CONVENTION (agenda item 6) (CAT/C/5, 7, 9, 12, 16, 17 and 18)

39. Mr. BRUNI (Secretary of the Committee) said that 27 States parties had been due to submit their initial reports in 1988 and that the reports of Togo and Uganda had still not been received by the Committee. At its seventh session, the Committee had decided to invite Togo and Uganda to submit their initial reports and the additional reports requested in a single document. By notes verbales of 31 December 1991, the Secretary-General had brought that decision of the Committee to the attention of the two States parties.

40. At its seventh session, the Committee had decided not to consider the report of Belize in the absence of the representative of the State party and to request it to complete its report so that the Committee might consider it at the current session. The secretariat had communicated that decision to the Government of Belize in December 1991 and had sent it a reminder in March 1992, but it had not received any reply. The Government of Afghanistan had withdrawn the text it had made available to the secretariat in order to submit a new initial report, which would be considered at the ninth session.

41. With regard to the States which had been due to submit their initial reports in 1989, 2 out of 10, namely, Guyana and Peru, had still not transmitted their reports to the secretariat, which had sent them reminders. Of the 11 States whose initial reports had been due in 1990, only Brazil, Guinea, Poland and Portugal had still not transmitted their reports to the secretariat. Notes verbales had also been sent to those States. Of the seven initial reports requested for 1991, six had not been received by the secretariat, which had sent reminders. The report of Germany, which had now been made available to the members of the Committee in the working languages, would be considered at the ninth session.

42. At earlier sessions, the Committee had requested additional information from seven States and supplementary reports from eight States. The legislative texts requested from the Government of Denmark during the consideration of Denmark's initial report had been made available to the Committee. China had still not transmitted its initial report, despite the two reminders the secretariat had sent it. The Libyan Arab Jamahiriya had informed the secretariat that it would submit its initial report early enough so that the Committee might consider it at its ninth session.

43. From June 1988 to March 1992, 55 initial reports had been requested: 41 had been submitted and 14 had not been received. The Committee should also receive a dozen or so reports prior to its April 1993 session.

44. The CHAIRMAN recalled that the secretariat sent reminders to States which had not submitted their reports on time, first, after one year and, then, every six months. Even if that method was useful, it was not fully effective. Should the Committee adopt other measures or continue to follow the current practice?

45. Mr. GIL LAVEDRA said that, during a discussion at its preceding session, the Committee had noted that the submission of reports was a basic obligation of States and had considered the possibility of stepping up the measures it took to encourage States to submit their reports. He suggested that stronger measures should be taken against States which should have submitted their initial reports in 1988 or 1989.

46. Mr. LORENZO said that, for the States whose reports were most overdue, the Committee might request one single report to take the place of the initial report and the periodic report, as it had planned to do at the preceding session, and request the Centre for Human Rights to intervene through diplomatic channels.

47. The CHAIRMAN said that the Committee had already requested Togo and Uganda to combine their initial reports and first periodic reports in a single document, but, unfortunately, that request had still not been met. He also feared that such a measure might encourage States not to hurry to submit the initial report before the first periodic report.

48. Mrs. KLEIN BIDMON (Representative of the Secretary-General) said that the Centre for Human Rights would willingly approach permanent missions, but could only transmit a decision or a letter from the Committee or organize a meeting between the Chairman or the Bureau of the Committee and a representative of the permanent mission concerned. In any event, it could act only as a messenger; any other step had to come from the Committee itself.

49. Mr. EL IBRASHI said that it was up to the Committee to take initiatives and for the Chairman of the Committee to meet with the representatives of countries which were far behind in the submission of their reports.

50. Mr. SORENSEN said that, when the Committee had discussed the problem of the late submission of reports at its last session, he had suggested that the Committee should indicate the names of the States whose reports were overdue at the press conference after the permanent missions of those States had been notified and that it should decide to consider the situation in those countries in the absence of a report.

51. Mr. BEN AMMAR said that the Committee might continue to implement the measures decided on at the last session and adopt new measures to deal with new situations.

52. Mr. EL IBRASHI said that, in his view, it was important for the Chairman to contact the ambassadors of the countries concerned before giving the names of those countries at the press conference.

53. Mr. MIKHAILOV said that, in addition to the measures proposed by the other members, the Committee might encourage States to submit their initial reports as soon as possible, bring the problem of the late submission of reports to the attention of the Under-Secretary-General so that he might possibly send a note to the States concerned and inform the meeting of States parties to the Convention. All those measures might help to enhance the effectiveness of the Committee's work.

54. Mr. LORENZO said that, if the Committee contacted a particular permanent mission, it might ask the representative of the State in question whether there were technical problems involved in the submission of the report and propose the assistance of the Centre for Human Rights.

55. The CHAIRMAN, summing up the discussion, said that the Committee was considering the possibility of requesting States which were very late in submitting their reports to submit an initial report and a periodic report simultaneously in a single document, that possibility already having been applied to two States. With regard to contacts with permanent missions, he had no way meant to imply that the Under-Secretary-General might act as a messenger: he had thought that the Under-Secretary-General might talk personally with the ambassadors of the countries concerned. Since the members of the Committee considered it preferable, however, he, as Chairman of the Committee, would agree to meet with the representatives of the States whose reports were overdue. During those discussions, he would not fail to ask about problems with the preparation of reports and would propose the assistance of the Committee and the Centre for Human Rights, drawing the attention of the representatives to the reporting obligations of States parties under the Convention.

56. The countries which had not submitted their reports on time had already been referred to in the Committee's report to the General Assembly and it might be a rather sensitive matter to name them at the press conference, particularly as the situation was not at all catastrophic. For the time being, it would be enough to indicate generally that States were not all submitting their reports by the appointed deadlines. If the situation grew worse, the Committee might then have to give journalists the names of the States concerned as a means of alerting international public opinion.

57. If he heard no objection, he would take it that the Committee wanted him to contact the heads of the permanent missions of the States whose reports were three years overdue in order to inform them that it was concerned and would like them to comply with their reporting obligations and in order to offer them the assistance of the Centre for Human Rights.

58. It was so decided.

59. Mr. GIL LAVEDRA stressed that, in his talks with the representatives of permanent missions, the Chairman should make it clear that the late submission of reports and the complications it might create for the Committee's work were linked to the problems States might be encountering.

60. The CHAIRMAN said that that was how he understood the action the Committee had requested him to take. At the current session, he was supposed to contact four States: Togo, Uganda, Guyana and Peru. If a country did not have a permanent mission in Geneva, he would address a letter to its Minister for Foreign Affairs.

61. Referring to Mr. Sorensen's suggestion that the Committee should consider the situation of States which had not submitted reports on the basis of information available from other sources, he said that, although such a practice might be admissible, it should be followed only as a last resort.

62. Mr. BEN AMMAR said that, at a later stage, the Committee might also state that the non-submission of reports was a serious breach of one of the articles of the Convention.

63. The CHAIRMAN said that that possibility might also be considered later. At present, however, in itself and in comparison with the situation in other committees, the situation with regard to the submission of reports to the Committee against Torture was not bad.

The meeting rose at 12.10 p.m.

(56)

UNITED
NATIONS

CAT

Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment

GENERAL

CAT/C/SR.106
1 May 1992

Original: ENGLISH

COMMITTEE AGAINST TORTURE

Eighth session

SUMMARY RECORD OF THE FIRST PART (PUBLIC)* OF THE 106th MEETING

Held at the Palais des Nations, Geneva,
on Tuesday, 28 April 1992, at 3 p.m.

Chairman: Mr. VOYAME

CONTENTS

Address by the Director-General of the United Nations Office at Geneva and Under-Secretary-General for Human Rights

Organization of work

* The summary record of the second part (closed) of the meeting appears as document CAT/C/SR.106/Add.1.

This record is subject to correction.

Corrections should be submitted in one of the working languages. They should be set forth in a memorandum and also incorporated in a copy of the record. They should be sent within one week of the date of this document to the Official Records Editing Section, room E.4108, Palais des Nations, Geneva.

Any corrections to the records of the public meetings of the Committee at this session will be consolidated in a single corrigendum, to be issued shortly after the end of the session.

GE.92-12269/9599a

The meeting was called to order at 3.10 p.m.

ADDRESS BY THE DIRECTOR-GENERAL OF THE UNITED NATIONS OFFICE AT GENEVA AND UNDER-SECRETARY-GENERAL FOR HUMAN RIGHTS

1. The CHAIRMAN welcomed Mr. Antoine Blanca, Director-General of the United Nations Office at Geneva and Under-Secretary-General for Human Rights, and, on behalf of the Committee, congratulated him on his appointment.

2. Mr. BLANCA (Director-General of the United Nations Office at Geneva and Under-Secretary-General for Human Rights) welcomed members to the eighth session of the Committee Against Torture. He regretted that he had been unable to attend the opening meeting. Since it was his first meeting with the members of a body set up to monitor an international human rights instrument, he took the opportunity to assure the Committee of his special interest in activities to combat torture, activities which constituted one of the major goals of the United Nations and the Universal Declaration of Human Rights.

3. He congratulated the Committee's new and re-elected members, and the Chairman and officers on the two-year mandate recently conferred on them. He wished them every success in their struggle against torture and other cruel, inhuman or degrading treatment or punishment, one of mankind's greatest scourges and one of the gravest threats to the integrity and dignity of the person. The Committee, in the few years since its inception, had acquired experience which was all the more fruitful for the close ties it had established with other bodies active in the struggle against torture. His predecessor, Mr. Martenson, had regularly informed the Committee about other relevant bodies' activities and events of interest to the Committee and for the implementation of the Convention; he would try to continue that tradition.

4. Since the Committee's previous session, Monaco and Benin had acceded to the Convention, on 6 December 1991 and 12 March 1992 respectively, thus bringing the number of States parties to 65. Monaco had also made the declarations provided for under articles 21 and 22 of the Convention. Latvia, which had acceded to the Convention on 14 April 1992, would become the sixty-sixth State party next month.

5. The General Assembly, in decision 46/430, had taken note of the Committee's fourth annual report (A/46/46); the Third Committee had expressed satisfaction with the Committee's methods of work and hoped that sufficient financial resources would always be available to ensure that the Convention continued to be implemented effectively. The General Assembly had also taken note, in its resolution 46/110, of the Secretary-General's report on the United Nations Voluntary Fund for Victims of Torture. Since the presentation of the previous report, 16 Governments had made voluntary contributions to the Fund totalling almost US$ 800,000 up to February 1992; subsequent contributions by 7 Governments had taken the total beyond that figure. The Board of Trustees of the Fund, at its tenth session, had examined information concerning 104 projects, and the Secretary-General had approved its recommendation that 72 new grants should be made. The Chairman of the Board would doubtless be providing the Committee with further details.

6. At its previous session, the Commission on Human Rights had discussed the Convention and, in resolution 1992/25, had again urged all States to become parties to the Convention, as a matter of priority, and accept its optional provisions; the Commission had also invited those States parties which had entered reservations to article 20 of the Convention to consider withdrawing them.

7. The Commission had also studied the report of its Special Rapporteur on questions of torture (E/CN.4/1991/17), including the account of his visit to Indonesia and East Timor. During 1991 the Special Rapporteur had again received an alarming number of communications about allegations of torture, and a growing number of requests for urgent action. During the period covered by his latest report, he had addressed urgent appeals to the Governments of 31 countries, 18 of which had already replied; he had also exchanged correspondence with the Governments of 65 countries, many of which were parties to the Convention. The Commission, in resolution 1992/32, had approved the Special Rapporteur's conclusions and recommendations; two of the latter, that incommunicado detention should be declared illegal and that Governments and professional and medical associations should take strict measures against members of the medical profession who played a role in the practice of torture, were matters frequently raised by the Committee itself when examining reports submitted by States parties.

8. The Commission, at its latest session, had also discussed the question of a draft optional protocol to the Convention which would institute a preventive system of visits to places of detention; and it had decided, in resolution 1992/43, to establish an open-ended inter-sessional working group to draft an optional protocol, using as a basis the draft text proposed by the Government of Costa Rica, and to consider the implications of adopting such a protocol. The Commission had invited the Committee, through the Secretary-General, to send its comments for consideration by the working group; the Secretary-General would circulate those contributions to Governments in advance of the working group's meeting, which should take place before the Commission's next session.

9. The Commission had also approved, by resolution 1992/29, the draft Declaration on the protection of all persons from enforced disappearance, and had decided to transmit the text, through the Economic and Social Council, for adoption by the General Assembly.

10. The Working Group established by the Commission to look into cases of arbitrary detention or detention imposed in any other manner incompatible with relevant international norms had adopted, during its second session in March 1992, an urgent action procedure - already used several times - consisting in transmitting a complaint received by the Group to the Ministry for Foreign Affairs of the country concerned by the speediest possible means. He hoped that that new procedure would provide better protection for the persons concerned.

11. The States parties to the Convention, at their third meeting held on 26 November 1991 (CAT/SP/SR.3), had discussed the question of their financial obligations under the Convention, on which the mechanism for that

instrument's implementation depended. They had approved the programme budget estimates for 1992 and 1993 but had voiced their increasing concern about the viability of the financial regime established pursuant to the Convention. They had requested the Secretary-General to bring their decision (contained in document CAT/SP/SR.3) to the Committee's attention.

12. In January 1992 Australia had transmitted to the Secretary-General a proposed amendment to the provisions of articles 17 and 18 of the Convention relating to the mechanism for financing that instrument. The aim was to transfer the financing of the Convention, hitherto based exclusively on contributions by States parties, to the United Nations regular budget. The procedure, pursuant to article 29 of the Convention, which enabled States parties to consider the amendment proposed by Australia was already under way.

13. He reiterated to the Chairman and members of the Committee his best wishes for success in their tasks, in the course of which he and the secretariat would provide their fullest support.

14. The CHAIRMAN thanked the Director-General of the United Nations Office at Geneva and Under-Secretary-General for Human Rights for his address and good wishes.

ORGANIZATION OF WORK

15. The CHAIRMAN said that a matter had arisen in connection with the implementation of article 20 of the Convention, which would have to be considered in closed session. If there was no objection, therefore, he would close the public meeting in order that a closed meeting could be held immediately.

16. It was so agreed.

The public meeting rose at 3.35 p.m.

UNITED
NATIONS

CAT

Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment

Distr.
GENERAL

CAT/C/SR.107
8 May 1992

ENGLISH
Original: FRENCH

COMMITTEE AGAINST TORTURE

Eighth session

SUMMARY RECORD OF THE 107th MEETING

Held at the Palais des Nations, Geneva,
on Wednesday, 29 April 1992, at 10 a.m.

Chairman: Mr. VOYAME

CONTENTS

Consideration of reports submitted by States parties under article 19 of the Convention (continued)

Initial report of Luxembourg

Exchange of views with the Board of Trustees of the United Nations Voluntary Fund for Victims of Torture

This record is subject to correction.

Corrections should be submitted in one of the working languages. They should be set forth in a memorandum and also incorporated in a copy of the record. They should be sent within one week of the date of this document to the Official Records Editing Section, room E.4108, Palais des Nations, Geneva.

Any corrections to the records of the meetings of this session will be consolidated in a single corrigendum, to be issued shortly after the end of the session.

GE.92-12277/4463B

The meeting was called to order at 10.10 a.m.

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER ARTICLE 19 OF THE CONVENTION (agenda item 7) (continued)

Initial report of Luxembourg (CAT/C/5/Add.29)

1. At the invitation of the Chairman, Mr. Duhr, Ms. Konsbruck and Mr. Schockweiler (Luxembourg) took places at the Committee table.

2. Mr. DUHR (Luxembourg), introducing his country's initial report (CAT/C/5/Add.29), stressed that respect for human rights and fundamental freedoms was a genuine concern of the Luxembourg Government at the national, regional and world levels. At the national level, all public and individual rights and freedoms were guaranteed to the highest degree by the Constitution, the international conventions ratified by Luxembourg or internal legislation and regulations. The full application of those guarantees was demonstrated by the absence of any reference to Luxembourg in the accusations of human rights violations made each year by such respectable non-governmental organizations as Amnesty International.

3. At the regional level, Luxembourg was one of the European States militating for respect for human rights within three bodies. Firstly, within the Council of Europe, it participated in the formulation and application of major legal instruments for the improved observance of human rights and fundamental freedoms: the European Convention against Torture was broader in its scope than the United Nations Convention against Torture and permitted on-the-spot inspections. Secondly, Luxembourg participated in the Conference on Security and Cooperation in Europe, whose "human rights basket" had been the starting-point for the political developments which had led to the restoration of the rule of law in practically all European countries. Lastly, within the framework of European political cooperation, Luxembourg and its partners in the European Community had made respect for human rights throughout the world one of the mainstays of the Twelve's foreign policy, and Luxembourg had held the Presidency when a basic declaration on the subject had been adopted in summer 1991.

4. Lastly, at the world level, Luxembourg had signed and ratified, and was applying, all human rights covenants and conventions.

5. Despite that good record, he would be careful not to give his country a stamp of approval, which would make it both judge and jury. It was vital that assessment of the practical observance of human rights in various countries should also be a matter for bodies not coming under any national authority. The Committee's role in eliminating torture was vital, as were the possibilities for action provided for in the European Convention against Torture and those envisaged in the draft optional protocol to the United Nations Convention against Torture.

6. The late submission of Luxembourg's initial report was due to purely technical reasons: having ratified the European Convention on 1 August 1988, Luxembourg had, a fortiori, conformed strictly to the provisions of the United Nations Convention against Torture. Without prejudging the Committee's

assessment, it was possible that Luxembourg legislation could be perceived as offering room for improvement. The Luxembourg authorities which might, as appropriate, be given responsibility for adapting national legislation relied heavily on the comments and suggestions of members of the Committee; bringing Luxembourg legislation into line with the United Nations Convention was a process which would naturally take some time.

7. For that reason, the initial report before the Committee should be regarded as a preliminary evaluation; the Committee's assessment of the situation would be conveyed to Luxembourg. A Legislative Reform Commission composed of representatives of the Ministry of Justice and other judicial bodies had been set up with a view to the adoption of such measures as might be required by the United Nations Convention against Torture. In that connection, it might be appropriate to put back the deadline for the submission of Luxembourg's next periodic report so as to allow the Legislative Reform Commission sufficient time to introduce particular amendments to Luxembourg legislation that might be recommended by the Committee.

8. Mr. MIKHAILOV (Country Rapporteur) said he found the Luxembourg report detailed and concrete. However, there were some questions that remained unanswered, first and foremost the vital question of whether torture and other cruel, inhuman or degrading treatment or punishment existed in Luxembourg at the present time. The report contained only very brief and incomplete comments on that point.

9. Paragraph 1 of the report (CAT/C/5/Add.29) listed the conventions ratified by the Luxembourg Government, but there was no indication of how and by what means those instruments were incorporated in internal legislation and took precedence over it. In that connection, it was mentioned that some decisions were taken by Luxembourg's supreme judicial organ; he would like to have more precise information on those cases.

10. With regard to article 2 of the Convention, it would be useful to know whether Luxembourg legislation, and more particularly the Penal Code, made a clear distinction between torture and other cruel, inhuman or degrading punishment under the Convention against Torture, on the one hand, and more generally defined treatment that an individual might inflict on someone else, on the other. The question was prompted by the fact that the Luxembourg Penal Code seemed to lay down very general rules rather than the specific provisions called for by the Convention.

11. Paragraph 32, relating to article 10 of the Convention, stated that article 257 of the Penal Code prescribed increased penalties for public officials or officers who were guilty of torture or cruel and inhuman treatment; however, the other provisions of the Penal Code referred to all persons who were guilty of such acts. In that connection, it seemed that the definition of torture contained in the Convention had not been followed. He wondered whether the Luxembourg Government intended to incorporate a specific provision on the subject in the Penal Code.

12. In that context, it would be interesting to have further particulars the penalties laid down in the Luxembourg Penal Code, and especially the content and limits of the penalty of hard labour for life. Moreover, he asked whether

the application of the death penalty was consistent with Protocol No. 6 to the European Convention on Human Rights. Lastly, it would be useful to have details of custodial penalties.

13. Paragraph 17 of document CAT/C/5/Add.29, relating to article 4 of the Convention, required elucidation in that it failed to make clear who was the perpetrator of the offence concerned. Furthermore, paragraph 34 relating to article 11 referred to three types of violations - crimes, offences and infringements; it would be interesting to know how it was decided that a particular violation fell into one or other of those categories.

14. Mr. SORENSEN (Alternate Country Rapporteur) noted with satisfaction that the report under consideration (CAT/C/5/Add.29), although brief, dealt with most of the basic issues; he would raise only a small number of points to which he attached particular importance.

15. Firstly, paragraph 4 of the report indicated that international standards always took precedence over national rules, even those post-dating them: that was an excellent principle but how, in practice, did judges, police officers, prison governors etc., have access to the texts of the instruments concerned, which could hardly be their bedtime reading? Moreover, what happened in the event of a discrepancy between national rules and international standards? While Luxembourg was a small country with a high level of education, it was difficult to imagine that a police officer would ponder that question in a specific situation.

16. Paragraph 8 of document CAT/C/5/Add.29 stated that the term "torture" was not defined either in the Constitution or in legislative texts. That was a good thing in that the term could be given a very broad interpretation, but on the other hand a problem arose since international conventions, which took precedence over Luxembourg legislation, contained a definition. There again, it would be interesting to know how Luxembourg struck a balance between international and internal law.

17. He had a general question to ask concerning article 2 of the Convention. In paragraphs 9 and 10 of the report, reference was made to violence against individuals and infliction of bodily harm. Luxembourg legislation thus placed strong emphasis on physical violence as opposed to mental violence, even though article 473 of the Penal Code, quoted in paragraph 11 of the report, spoke of "violence or threats". Since psychological torture could be among the worst forms of torture, it would seem wise to include that concept in the amendments that were to be made to the legislation; that would be consistent with the spirit of the Convention.

18. The information given in paragraph 13 of the report (CAT/C/5/Add.29) on the question of obedience was particularly interesting and the texts quoted were extremely well drafted. Was it possible to have recourse to a mediator in Luxembourg for such complex issues as those relating to obedience?

19. In connection with article 3 of the Convention, it was stated in paragraph 14 of the report that "expulsion may be ordered by the Minister of Justice"; he asked whether the Minister was the only person who could make such an order. With regard to paragraph 15 of the report, he questioned

Luxembourg's interpretation of article 3 of the Convention, for it seemed to consider that torture was practised solely for political reasons. In fact, however, torture was inflicted for many other reasons as well, and it was important not to expel a person to a State where he ran the risk of being subjected to torture. Information was required on what guarantees existed in that connection.

20. It seemed from a reading of paragraph 26 of the report that the Luxembourg law on extradition did not meet the Committee's requirements. Paragraph 33, relating to article 10 of the Convention, stated that the fundamental principles of democracy and respect of human rights were taught, a fact which he welcomed. Nevertheless, it appeared to him that those principles were rather too vague; in any instruction, it should be made clear that torture was a most serious violation of human rights. Similarly, although there was no faculty of medicine in Luxembourg, doctors should be given specific instruction in questions relating to torture.

21. He was particularly interested in conditions of detention; in that connection, paragraph 35 of the report stated that "Unless the interests of the investigation militate against it, the detained person may send a message to an individual of his or her choice". He inquired what those "interests" were. Moreover, he asked whether the prisoner could notify two persons of his choice, for instance a member of his family and his lawyer. With regard to the medical examination, could the prisoner be examined by a doctor of his choice? He would also like to know who was empowered to decide on an extension of detention beyond the 24-hour deadline.

22. His main concern regarding Luxembourg was conditions of detention, and particularly incommunicado detention. He asked a series of questions on that subject, notably whether a person placed in incommunicado detention could contact his lawyer; whether such a person was entitled to an open-air exercise hour; whether the decision to place somebody in incommunicado detention could be made by the prison governor, who might take such a measure as a punishment, for instance, or whether it was a judge that had to decide; whether incommunicado detention was limited in time; who reviewed the case once it had been decided to place a prisoner in incommunicado detention; what medical services were made available to incommunicado prisoners; whether doctors who visited a person in incommunicado detention came under the police or the prison service - a vital question, since a very pernicious practice seemed to exist in that respect; whether doctors could draw up objective findings and whether those findings were communicated to the prison governor or the judge; and, even more important, whether the person concerned could ask to be examined by a doctor of his choice.

23. With regard to article 14 of the Convention, he would like to know whether the State itself provided compensation or whether the victim had to take legal proceedings in order to obtain it.

24. Mr. EL-IBRASHI congratulated the Luxembourg delegation on the clarity of its report; nevertheless, he would like some further explanations. Firstly, in a system under which Luxembourg criminal law existed side by side with directly applicable international conventions to which Luxembourg was a party,

what happened in the event of an inconsistency between an article of a convention and Luxembourg criminal law? He would also like to know whether there was a court for deciding whether a law was constitutional.

25. Referring to article 2 of the Convention, he endorsed the remarks made by Mr. Sorensen, who had been surprised to see from the Luxembourg report that torture was apparently circumscribed to physical injury and violence, when psychological torture was also a serious matter with serious consequences. He also noted that, in the event of aggravating circumstances, the minimum penalty prescribed could be doubled; in that connection, he inquired about the maximum penalty.

26. With respect to articles 13 and 14, concerning redress and compensation, he would welcome some further details regarding the machinery involved. In particular, did the general rules of civil law, under which the victim was entitled to redress for injury sustained and loss of earnings, apply for the purposes of compensation for torture?

27. Mr. KHITRIN said he would like to see Luxembourg include in its Penal Code a specific and comprehensive definition of torture which would also prohibit psychological torture. He would also like to know how, in practice, an individual could invoke the provisions of the Convention, as indicated in paragraph 6, and in which Luxembourg law that clause appeared. He also inquired how the general public was informed of that specific right.

28. Further details should be given of the situation concerning the application of the various articles of the Convention, and particularly regarding conditions of detention and the duration of police custody, since the Committee would have difficulty in accepting the report as it stood without such information. He would also like to be informed more fully of the country's judicial structure and to know whether there was a clear separation between the executive and the legislature. Some clarifications on the status of judges and the legal status of the State Prosecutor and the Procurator General would also be useful.

29. Lastly, he would like to know which bodies were responsible for State security. Were they empowered to arrest someone and, if so, for how long? He would also welcome figures on offences and the prison population and information on conditions of detention.

30. Mr. BURNS said that many of the questions which he had intended to put had already been asked by his colleagues. He admitted that he had found it somewhat difficult to read the report. He would like further details concerning the structure of the judiciary, and in particular who was responsible for appointing and dismissing judges. In addition to the ordinary courts, was there a State Security Court? Similarly, were there police security bodies and, if so, were the laws relating to arrest and detention different for such bodies? He would also like to know whether the institution of habeas corpus existed in Luxembourg. As for the 24-hour custody deadline - a deadline which he welcomed, as being one of the shortest in existence - he asked who decided on its extension.

31. He expressed surprise at the existence of capital punishment and hard labour in Luxembourg. He would like to know which offences carried the death penalty and the number of persons sentenced to death and, if appropriate, executed in recent years. As for hard labour, he asked how many convicted prisoners were subjected to that regime and in exactly what circumstances that penalty was imposed. He also wished to know how many prisons there were in Luxembourg.

32. Articles 473 and 438 of the Penal Code, quoted in paragraphs 11 and 12 of the report, did not seem to penalize torture as defined in the Convention. Moreover, psychological torture was not mentioned in any provision.

33. He further emphasized that article 7 of the Convention must be read in conjunction with article 3. He recalled that article 7 enunciated the principle of universal jurisdiction. Luxembourg was therefore obliged to prosecute anyone responsible for an offence under article 4 of the Convention who could not be extradited to a State where there were substantial grounds for believing that he would be in danger of being subjected to torture. The last part of paragraph 26 was ambiguous, stating that Luxembourg courts did not, generally speaking, have jurisdiction over offences committed outside the national territory. Did the Luxembourg authorities nevertheless acknowledge an obligation in that regard?

34. The comment under article 14 (para. 38 of the report) was not very clear either. Was the victim of an act of torture entitled to full redress? Had the State established redress and compensation machinery that was independent of the torturer's resources?

35. Lastly, he noted that paragraph 39 said the same thing twice, namely that it was a principle that judges could not consider any evidence obtained by wrongful or unfair methods, but failed to give any indication of what the situation was in practice; the Committee would welcome an assurance that no confession obtained by torture (including mental torture in the form of threats) could be adduced as evidence, as well as a clarification of the meaning of the concept of "wrongful or unfair methods".

36. Mr. DIPANDA MOUELLE said he would welcome further information on the penalty of hard labour and how it was carried out. Was that penalty not contrary to the philosophy and spirit of the Convention and did it not in fact constitute inhuman treatment? With regard to the application of article 7 of the Convention, relating to universal jurisdiction, he asked how and under what provisions of the Code of Penal Procedure proceedings were brought. He also inquired how the mutual judicial assistance provided for in article 9 of the Convention was carried out in practice and whether such arrangements existed with countries with which Luxembourg was not bound by a treaty.

37. He also requested further details on police custody, for it was at that time that the risk of torture was at its height. How long did pre-trial detention last? What concrete measures were taken to monitor the situation of persons held in police cells and in prisons? Was there a commission responsible for such supervision? With respect to articles 12 and 13, he asked whether the officials responsible for discipline in prisons were armed, and what measures could be taken in the event of a mutiny. With regard to

article 14, the responsibility of the State was established, but it would be interesting to know whether victims could also apply to the criminal courts invoking the responsibility of an official and by what mechanism the State could be implicated.

38. On the subject of article 15, he would like to know whether there had been cases in which confessions had been obtained by wrongful or unfair methods. With regard, lastly, to the application of article 16, it would be desirable for the Luxembourg delegation to provide the Committee with texts on the treatment of prisoners. He inquired whether adults were separated from minors and women from men, whether there were high-security prisons and whether there had been any cases of torture and, if so, what penalties had been applied.

39. Mr. GIL LAVEDRA said that he was puzzled by the apparent lack of consistency between paragraph 20 and paragraph 22 of the report, dealing with the application of article 5. According to paragraph 22, and contrary to paragraph 20, it seemed that only the commission of certain offences by Luxembourg citizens abroad could justify proceedings being taken in the Grand Duchy. He also stressed the anachronistic nature of the penalty of hard labour, which was characteristic of the era of the industrial revolution of the eighteenth and nineteenth centuries and had met a demand for manpower. In the modern age, the concept of punishment had changed. Moreover, it was stated that a medical examination could be carried out at the request of the State Prosecutor or of the detained person or a member of his family, but how was that possible in practice if the person was held incommunicado?

40. In conclusion, he requested clarifications concerning police custody. He asked whether the person arrested must be brought before a judge once the 24-hour period mentioned in the report had expired and what was the validity of any statements made to the police.

41. Mr. BEN AMMAR said he was pleased to note that Luxembourg was not one of the countries commanding the attention of non-governmental organizations concerned by the problem of torture. He asked whether the application of article 2 was ensured even during a state of emergency. He further inquired whether there was a police code of ethics and whether Luxembourg had an institution bringing together representatives of the Government and members of humanitarian organizations which was responsible for ensuring respect for human rights and, inter alia, monitoring the situation in places of detention.

42. The CHAIRMAN agreed with other members of the Committee who had said that, in order to satisfy the Convention, Luxembourg legislation should penalize psychological torture: the Convention could not have direct criminal applicability since it did not provide any penalties. Luxembourg legislation also contained some gaps with regard to the application of article 3, concerning extradition, and articles 5 and 7, relating to universal jurisdiction; he wondered whether, in those two cases, the Convention could be held to be directly applicable. With respect to the application of article 6, paragraph 3, concerning the possibility for a detainee to communicate with the nearest appropriate representative of the State of which he was a national, paragraph 24 of the report stated that that provision was applicable in Luxembourg except where the person in custody was being held incommunicado

under a decision of the examining magistrate. However, the Convention did not provide for any exception of that kind, and that restriction thus seemed contrary to the Convention. With regard to the mutual judicial assistance provided for in article 9 of the Convention, it was stated in paragraph 30 that judges could comply with letters of request emanating from foreign judges only if they were authorized to do so by the Minister of Justice. He inquired what was the Minister of Justice's practice in that respect and whether he did in fact authorize compliance with letters of request.

43. The explanations given regarding the application of articles 11, 12 and 13 were not entirely satisfactory. In particular, nothing was said about the measures taken to ensure the impartiality of the investigation and to guarantee the protection of the complainant.

44. Noting that there were no more questions to put to the Luxembourg delegation, he asked the members of the Committee whether they agreed to defer consideration of Luxembourg's next report, as requested by the Luxembourg delegation, or whether they wished that report to be submitted by the scheduled date (October 1992) at the same time as the additional information and documentation that had just been requested.

45. Mr. DUHR (Luxembourg) thanked the members of the Committee for the interest they had shown in his country's report. While there were some legislative provisions that had not been updated, the death penalty had been abolished in Luxembourg by an act of 20 June 1979, having been applied for the last time in 1956. He also indicated that there was a single prison in Luxembourg.

46. He further recalled that the Secretary-General had requested the States parties reporting under various United Nations instruments to compile an introductory section containing general information for the bodies dealing with those instruments. The documents submitted by Luxembourg three weeks previously answered a good number of the questions put by members of the Committee, particularly on the organization of the judicial system. His delegation would therefore endeavour to reply to the questions that were not addressed in that document.

47. Mr. DIPANDA MOUELLE suggested that it would be appropriate to put back the date of submission of the periodic report so that account could be taken of the anticipated amendments to the legislation.

48. After an exchange of views, the CHAIRMAN said that the Committee would take a decision on the matter at its next meeting, after hearing the replies of the Luxembourg delegation.

49. The meeting was suspended at 11.50 a.m. and resumed at 12.10 p.m.

EXCHANGE OF VIEWS WITH THE BOARD OF TRUSTEES OF THE UNITED NATIONS VOLUNTARY FUND FOR VICTIMS OF TORTURE

50. At the invitation of the Chairman, Mrs. Odio-Benito, Mr. Harano, Mr. Tosevski, Mr. Wako and Mr. Walkate (United Nations Voluntary Fund for Victims of Torture) took places at the Committee table.

51. The CHAIRMAN welcomed the members of the Board of Trustees of the United Nations Voluntary Fund for Victims of Torture and expressed satisfaction at the fact that the Committee and the Fund were meeting concurrently during the present year, thus enabling them to have an exchange of views on their shared concerns. That practice should perhaps be institutionalized in the future. After inviting the Board of Trustees of the Fund to participate in the press conference which the Committee would be giving at the end of its current session, he introduced the new members of the Committee to the Board delegation and gave an account of the Committee's various activities.

52. Mr. WALKATE (United Nations Voluntary Fund for Victims of Torture) welcomed the opportunity that had been given him, as Chairman of the Board of Trustees of a body seeking to assist torture victims, to meet with a committee whose task was to prevent that odious practice.

53. After outlining the activities of the Board of Trustees of the Fund, he said that the Board was currently meeting to formulate recommendations to the Secretary-General. To date, the Secretary-General had always accepted such recommendations, which was extremely encouraging. Another task of the Board was to examine and follow up projects submitted to it: there were currently 118 such projects, the great majority of them requiring decisions. The Board's annual session lasted eight working days, three or four of which were spent on hearings with project officers who came from all over the world to present their problems and their suggestions. That was a vital part of the session, since it enabled the members of the Board of Trustees to have a concrete idea of assistance for torture victims rather than simply approaching it in administrative terms.

54. There were still numerous financing difficulties and it would doubtless be desirable for the Committee against Torture to draw the attention of States parties to the Convention to the need to contribute, or to increase their contributions, to the Fund. Only a minority of States members of the United Nations participated in the Fund's financing. In that connection, he added that the Fund also received donations from non-governmental sources. An idea of the difficulties confronting the Fund could be gained from the fact that during the current year it had been requested to provide assistance of some US$ 3 million, whereas it had only US$ 1.5 million available; consequently, it could only accede to half of the requests submitted to it.

55. Moreover, the Fund's capacity had declined, partly because more and more torture victims were requesting assistance from the various aid centres, the most important of which were situated in Copenhagen, Paris, Toronto, London, Minneapolis, Buenos Aires and Santiago. The rise in the number of refugees was another factor that increased the number of persons that could be eligible to receive aid after being tortured. The Fund would endeavour to take advantage of the World Conference on Human Rights to obtain more voluntary contributions.

56. In order to educate public opinion on the realities of torture, the Fund had subsidized a film in French, prepared in cooperation with the "Havre" Centre in Paris. The Board of Trustees of the Fund would be happy to meet with the Committee against Torture at its future sessions if it was possible

to have the sessions of the two bodies coincide and hoped to be able to participate in the press conference to be given by the Committee at its current session.

57. Mr. EL-IBRASHI said he would like to know what were the procedures for torture victims wishing to approach the Fund and what criteria the Fund used in accepting applications. As the Fund became better known it would receive more and more applications: what was the answer to that dilemma? Moreover, how could a person tortured in his home country approach the Fund? Lastly, what did the Board of Trustees understand by "projects"?

58. Mr. WALKATE (United Nations Voluntary Fund for Victims of Torture) said that the secretariat had prepared an application form which enabled the Fund to obtain precise information, particularly on the amount requested by a particular centre. The "projects" were activities by anti-torture centres and various non-governmental organizations, which could sometimes tend to several thousand torture victims.

59. With very few exceptions, the Fund did not entertain applications from individuals and did not assist individuals directly, since its main function was to finance organizations with a staff having the medical and social expertise to assist victims of torture. Applications were examined extremely thoroughly and the process entailed a great effort by the Fund, even though it placed great trust in the centres, which it had been partially financing for many years.

60. He added that, even if it were able to do so, the Fund would not finance all the activities of a centre, since it was dependent on voluntary contributions and could not therefore guarantee that such financing would continue. Lastly, as it became better known the Fund was certainly likely to be confronted with more applications; the only way out that he could see was to induce countries to consider being more generous.

61. Mr. HOUSHMAND (Representative of the Secretary-General) stated that, in certain cases, the United Nations could provide assistance to individual torture victims by steering them towards the nearest medical care and rehabilitation centre, with which the Secretariat then remained in contact in order to ensure follow-up.

62. Mr. SORENSEN said that money was the lifeblood of efforts to eliminate torture and that the Fund played a vital role in that connection, even though its means were limited. As an example, he mentioned the budget of the Copenhagen centre, which was estimated for the coming year at $6 million, or four times the total amount that the Fund had to distribute between the various centres.

63. He wondered whether the time had not come to stop financing the Fund from voluntary contributions and to finance it instead from the United Nations regular budget. The financing countries were not generally those that tortured, and the latter therefore had no financial incentive to end the practices whose victims were cared for by others.

64. Lastly, he inquired whether the Fund had designated representatives to the Preparatory Committee for the World Conference and the World Conference itself, where Mr. Mikhailov and himself would be representing the Committee against Torture.

65. Mr. WALKATE (United Nations Voluntary Fund for Victims of Torture) welcomed the very astute remark made by Mr. Sorensen. It would indeed be highly desirable for the Fund to be financed from the United Nations regular budget; however, that would require a decision by the General Assembly, which would imply a political will on the part of States to take such action. In the meantime, it would be very useful for bodies such as the Committee against Torture and the Human Rights Committee to ask Governments whose periodic reports they considered what was the status of their contributions to the Fund. To that end, the Fund was ready to supply the Committee with figures for the contributions made by donor States since its establishment.

66. With regard to the World Conference, the Board of Trustees of the Fund wished to propose that, out of the two weeks that the Conference would last, about one hour should be set aside for a discussion on contributions to the Fund. He would shortly be meeting Mr. Blanca, who took a close interest in that question. The Board of Trustees would of course be represented at the Conference and looked forward to cooperating with the representatives of the Committee on that occasion.

67. Mr. BEN AMMAR suggested that collaboration between the Fund and the Committee against Torture should begin at the level of the regional preparatory meetings for the World Conference.

68. The CHAIRMAN thanked the members of the Board of Trustees of the Fund for coming to exchange views with the Committee and took note of the proposals made by Mr. Walkate. He asked whether a copy of the French film mentioned by Mr. Walkate was available.

69. Mr. PREMONT (Secretary of the Board of Trustees of the United Nations Voluntary Fund for Victims of Torture) said that the film would not be marketed in video cassette form until it had been shown at various festivals and on television, but the Committee could view it when it wanted.

70. The CHAIRMAN thanked Mr. Prémont and added that the Committee would probably like to see that film during its current session.

71. Mrs. Odio-Benito, Mr. Hatano, Mr. Tosevski, Mr. Wako and Mr. Walkate (United Nations Voluntary Fund for Victims of Torture) withdrew.

The meeting rose at 12.55 p.m.